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No. 02-1809

In The Supreme Court of the United States

J. ELLIOTT HIBBS,
Director of the Arizona Department of Revenue,
Petitioner,

v.

KATHLEEN M. WINN, Arizona taxpayer, et al.,
Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF THE STATES OF CALIFORNIA, ALABAMA, ALASKA, ARKANSAS, COLORADO, DELAWARE, FLORIDA, GEORGIA, HAWAII, IDAHO, ILLINOIS, INDIANA, IOWA, LOUISIANA, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MISSISSIPPI, MISSOURI, MONTANA, NEVADA, NEW HAMPSHIRE, NEW JERSEY, NEW MEXICO, NEW YORK, NORTH DAKOTA, OHIO, OREGON, PENNSYLVANIA, RHODE ISLAND, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS, UTAH, VIRGINIA, WASHINGTON, WEST VIRGINIA, WISCONSIN AND THE TERRITORY OF GUAM AND COMMONWEALTH OF PUERTO RICO AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

1. Did the Ninth Circuit err in holding, in conflict with the First, Fifth, Sixth and Eleventh Circuits, that the Tax Injunction Act, 28 U.S.C. §1341, and principles of comity that traditionally restrain federal judicial interference with state tax systems do not require district courts to dismiss constitutional challenges to state tax credits that directly impact the administration of a State's tax system?

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BRIEF IN SUPPORT OF PETITIONER

The Amici States, Puerto Rico and Guam, respectfully submit this brief as *amici curiae* in support of Petitioner in accordance with the provisions of Rule 37.4 of the Supreme Court Rules.

INTEREST OF *AMICUS CURIAE*

In the instant matter, the Ninth Circuit Court of Appeals concluded that the proscriptions of the Tax Injunction Act, 28 U.S.C. §1341 (hereafter "Act"), should not apply to the state tax-administration process as an institution of state government that is broadly described by the Act itself as comprising "assessment, levy [and] collection." Rather, in the appellate court's view, the proscriptions should apply *only* to the enumerated activities specified within the phrase, narrowly defined. In this case, then, the court construed "assessment" to exclude calculation of tax "credits," rendering the latter activity vulnerable to federal injunctive relief.

Amici States all impose taxes that provide credits and/or exemptions for certain taxpayers.[1] Tax credits are

[1] The 44 States that impose tax based upon personal income provide for credits and/or exemptions for certain taxpayers. See CCH State Tax Guide (All States) (2003) ¶15-110 (chart); *id.* at ¶¶15-206 (Alabama), 15-216 (Alaska), 15-236 (Arizona), 15-251 (Arkansas), 15-266 and 15-266a (California), 15-281 (Colorado), 15-293 (Connecticut), 15-311 (Delaware), 15-365 (Georgia), 15-371 (Hawaii), 15-386 and 15-386a (Idaho), 15-397 (Illinois), 15-405 (Indiana), 15-431 (Iowa), 15-446 and 15-447 (Kansas), 15-459 (Kentucky), 15-473 (Louisiana), 15-489 (Maine), 15-506 (Maryland), 15-521 (Massachusetts), 15-534 and 15-534a (Michigan), 15-551 (Minnesota), 15-581 and 15-581a (Missouri),

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15-596 and 15-597 (Montana), 15-609 (Nebraska), 15-637 (New Hampshire), 15-654 (New Jersey), 15-671 and 15-671a (New Mexico), 15-684 (New York), 15-701 and 15-702 (North Carolina), 15-715 (North Dakota), 15-729 (Ohio), 15-746 (Oklahoma), 15-760 and 15-760a (Oregon), 15-773 (Pennsylvania), 15-796 (Rhode Island), 15-806 (South Carolina), 15-832 (Tennessee), 15-866 (Utah), 15-881 (Vermont), 15-896 (Virginia), 15-925 (West Virginia), 15-941 (Wisconsin). The District of Columbia also provides for credits in its personal income tax law. *Id.* at ¶¶15-326 and 15-326a.

The 46 States that impose tax based upon corporate income provide for credits and/or exemptions for certain taxpayers. See CCH State Tax Guide (All States) (2003) ¶10-060 (chart); *id* at ¶¶10-204 and 10-206 (Alabama), 10-220 and 10-221 (Alaska), 10-236 (Arizona), 10-251 (Arkansas), 10-263a and 10-263c (California), 10-281 and 10-281b (Colorado), 10-295 (Connecticut), 10-309 (Delaware), 10-339a and 10-339b (Florida), 10-356 (Georgia), 10-371 (Hawaii), 10-836 (Idaho), 10-400 (Illinois), 10-412 and 10-415 (Indiana), 10-430 (Iowa), 10-444 (Kansas), 10-456a and 10-456c (Kentucky), 10-476 and 10-476c (Louisiana), 10-490 and 10-490b (Maine), 10-505 (Maryland), 10-517 and 10-517b (Massachusetts), 10-534 and 10-534b (Michigan), 10-551 (Minnesota), 10-564 and 10-564b (Mississippi), 10-581 (Missouri), 10-597 and 10-597b (Montana), 10-610 and 10-610b (Nebraska), 10-631 (Nevada), 10-640 (New Hampshire), 10-655 and 10-655b (New Jersey), 10-671 (New Mexico), 10-686 (New York), 10-699 (North Carolina), 10-714 (North Dakota), 10-729a (Ohio), 10-746 and 10-746b (Oklahoma), 10-761 and 10-761b (Oregon), 10-773 and 10-773c (Pennsylvania), 10-791 (Rhode Island), 10-806 (South Carolina), 10-836 (Tennessee), 10-866 and 10-866b (Utah), 10-880 (Vermont), 10-896 (Virginia), 10-925 (West Virginia) and 10-939a (Wisconsin). The District of Columbia also provides for credits in its corporate income tax law. *Id.* at ¶10-326.

South Dakota, Washington and Wyoming do not rely on income taxes, but like most States impose general property taxes, see CCH State Tax Guide (All States) (2003) ¶¶943 (South Dakota), 949 (Washington), 952 (Wyoming), which are subject to exemptions and credits. *Id.* at ¶¶20-817 (South Dakota), 20-907 (Washington), 20-952 (Wyoming). Texas imposes a corporate franchise tax, *id.* at ¶5-845, which is subject to credits and exemptions. *Id.* at ¶¶5-848 and 5-849. Washington also imposes a business and occupation tax, *id.* at ¶949, which is subject to exemptions and credits. *Id.* at ¶60-915.

(Continued on following page)

an integral part of state tax policy and practice. See CCH State Tax Guide (All States) (2003) ¶335 ("state tax philosophy [is] based on an elaborate network of deductions, credits and exemptions. . . . "); RIA All States Tax Guide ¶236 (2003) (noting that credits against state corporate income taxes are allowed to encourage business development and growth). *Amici* States therefore share Arizona's concern that the proscriptive sweep of the Act not be undermined by overly clever parsing of its terms to evade its intended purpose of preserving state taxation free from unnecessary[2] district court interference.

SUMMARY OF ARGUMENT

Fundamental to the ideal of our Union as a federated system of governments is the principle that the power to tax is to be exercised *"concurrently"* by the States and the government of the Union, and that it is to be exercised by the government of the States *"without abridgment"* by the

Most States also impose sales and use taxes, see CCH State Tax Guide (All States) (2003) ¶60-101 (table), which are subject to exemptions and credits. *See, e.g., id.* at ¶¶60-100 (chart); 60-120 (chart); 60-130 (chart); 60-140 (chart); 60-231 and 60-235 (Arizona); 60-261 and 60-265 (California); 60-336 (Florida); 60-531 and 60-535 (Michigan); 60-850 (Texas); 60-906 and 60-910 (Washington); and 60-935 (Wisconsin).

[2] The rulings of both the Ninth Circuit and the district court recognize *sub silentio* that the district court petitioners had an adequate and available alternative remedy in the Arizona state courts; otherwise, there would have been no need for the Court of Appeals to address the scope of the Act's jurisdictional bar. *See Kotterman v. Killian*, 972 P.2d 606 (Ariz. 1999), *cert. denied*, 528 U.S. 921 (1999), *see also Rhodes v. Killian*, 528 U.S. 810 (1999) (certiorari also denied). *Amici* take no position on the merits of the claim that the tax credits at issue violate the Establishment Clause.

government of the Union. *McCulloch v. Maryland*, 17 U.S. 316, 425 (1819). Over a century ago, this Court recognized that *any* federal court interference with state taxing power jeopardized the delicate balance of federalism. *Dows v. Chicago*, 78 U.S. 108, 110 (1871). Indeed, the Act was passed by Congress after this Court's watershed holding in *Ex parte Young*, 209 U.S. 123 (1908), to confirm the continuing vitality of the fundamental principles of federalism and comity that dictate restraint against unnecessary federal judicial interference in state taxation. *Fair Assessment in Real Estate Association, Inc. v. McNary*, 454 U.S. 100, 102-03 (1981).

The Court of Appeals suggests that the Act should be construed narrowly to preserve district court jurisdiction. But construction of the Act, like construction of any other statute defining federal court jurisdiction, is dictated by Congress' role under the Constitution in creating the district courts and defining the scope of their power. As this Court has repeatedly recognized, district courts have only such jurisdiction as Congress chooses to provide. *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994). In this case, the language of the Act is clear and comprehensive. As a limitation on district court power, its restrictions "must be neither disregarded nor evaded." *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978).

And evasion was precisely the purpose of the Ninth Circuit here, parsing Congress' comprehensive description of the state taxing process – "assessment, levy [and] collection," 28 U.S.C. §1341 – into constituent activities, narrowly defined. The effort is unreasonable; the assessment of a tax liability must necessarily encompass calculation of any credits and exemptions to which the taxpayer may be entitled. And the appellate court's simplistic

approach to complex state taxing schemes is demonstrative of the kind of mischief and confusion that will result if the Act is construed to permit district courts to hamhandedly reach into the state taxing process in order to decide which of the constituent processes, calculations, and procedures may be subjected to federal judicial control.

Amici respectfully urge the Court to reverse the judgment of the Ninth Circuit Court of Appeals.

ARGUMENT

THE TAX INJUNCTION ACT MUST BE CONSTRUED REASONABLY TO ENCOMPASS THE ENTIRE PROCESS OF STATE TAX ADMINISTRATION, WITHOUT PARSING THAT PROCESS INTO CONSTITUENT SUB-PROCESSES IN ORDER TO EVADE THE ACT'S PROSCRIPTIONS AGAINST UNNECESSARY FEDERAL COURT INTERFERENCE

A. Important Principles Of Federalism, Reflected In Both This Court's Jurisprudence And In The Tax Injunction Act, Bar District Court Interference With State Tax Administration When State-Court Remedies Are Available

When the Constitution's Framers "split the atom of sovereignty," *U.S. Term Limits v. Thornton*, 514 U. S. 779, 838 (1995) (Kennedy, J. concurring), they recognized that the States' taxing power was an essential element of state sovereignty, which could not be abridged by the federal government:

> [T]he individual States should possess an independent and uncontrollable authority to raise their own revenues for the supply of their own wants. . . . [T]hey would under the plan of the Convention retain that authority in the most absolute and unqualified sense; and . . . an attempt on the part of the national Government to abridge them in the exercise of it would be a violent assumption of power unwarranted by any article or clause of this Constitution.

The Federalist No. 32, at 199 (Alexander Hamilton) (Jacob E. Cooke ed., 1961).

Even before Congress enacted the Act, this Court had "uniformly concluded that federal courts cannot enjoin collection of state taxes when a remedy at law is available." *National Private Truck Council, Inc. v. Oklahoma,* 515 U.S. 582, 589 (1995). Underlying those decisions was the fundamental importance of tax revenue to state sovereignty: the "power to tax is basic to the power of the State to exist." *Arkansas v. Farm Credit Services of Central Arkansas*, 520 U.S. 821, 826 (1997). Over 130 years ago, this Court recognized that *any* interference with state taxing power jeopardized the delicate balance of federalism:

> It is upon taxation that the several States chiefly rely to obtain the means to carry on their respective governments, and it is of the utmost importance to all of them that the modes adopted to enforce the taxes levied should be interfered with as little as possible. Any delay in the proceedings of the officers, upon whom the duty is devolved of collecting the taxes may derange the operation of government, and thereby cause serious detriment to the public.

Dows v. Chicago, 78 U.S. 108, 110 (1871).

Though originally couched in terms of prudential restraints on the exercise of equity jurisdiction, see *e.g., Great Lakes Dredge & Dock Co. v. Hoffman*, 319 U.S. 293 (1943), judicial restraint from interference with state taxation matters has long been recognized by this Court as being informed by those fundamental principles of comity that are essential to "Our Federalism." *McNary*, 454 U.S. at 103. Indeed, as the Court has observed, the Act was enacted to ensure the continuity of these fundamental principles after this Court's landmark decision in *Ex parte Young*, 209 U.S. 123 (1908), holding that federal courts may enjoin state officers from enforcing an unconstitutional law. In passing the Act, Congress "recognized that the autonomy and fiscal stability of the States survive best when state tax systems are not subject to scrutiny in federal courts." *McNary*, 454 U.S. at 102-03; *Farm Credit Services,* 520 U.S. at 826-27 ("Enactment of the [Act] reflects a congressional concern to confine federal court intervention in state government, a concern prominent after . . . *Ex parte Young*. . . . ")

It is against this backdrop of constitutional jurisprudence and policy that the scope of the Act must be evaluated.

B. Construed To Effect Its Purposes, The Act Proscribes Unnecessary Federal Court Interference With All Of The Constituent Processes And Sub-Processes Of State Tax Administration

1. Construction of the Act begins with a recognition that district courts are not courts of general jurisdiction. It can no longer reasonably be disputed that federal district courts have only such jurisdiction as Congress chooses to confer on them. *Kokkonen*, 511 U.S. at 377; *Sheldon v. Sill*,

49 U.S. 441, 448 (1850) (upholding Judiciary Act's prohibition of circuit courts from "taking 'cognizance of any suit to recover the contents of any promissory note or other chose in action' [under specified conditions]"). The burden of establishing the existence of jurisdiction lies with the party asserting it. *Kokkonen*, 511 U.S. at 377, citing *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 182-183 (1936). And this Court has made clear that congressional limits on federal jurisdiction "must be neither disregarded nor evaded." *Kroger,* 437 U.S. at 374.

In this case, Congress' withholding of jurisdiction from federal courts is plain and unequivocal. The Act reads:

> The district courts shall not enjoin, suspend, or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

28 U.S.C. §1341.

The language is also sweeping in its compass. This Court has emphasized that, "[g]iven the systemic importance of the federal balance, and given the basic principle that statutory language is to be enforced according to its terms, federal courts must guard against interpretations of the Tax Injunction Act which might defeat its purpose and text." *Farm Credit Services,* 520 U.S. at 827; see also, *National Private Truck Council,* 515 U.S. at 590-91 (the Tax Injunction Act is "but a partial codification of the federal reluctance to interfere with state taxation.") The Act's purpose was manifestly "to limit drastically federal district court jurisdiction to interfere with so important a local concern as the collection of taxes." *Rosewell v. LaSalle National Bank*, 450 U.S. 503, 522 (1981).

The Act "on its face, yields no exception to the jurisdictional bar save where the State remedy is wanting." *Farm Credit Service,* 520 U.S. at 823; but see *Department of Employment v. United States*, 385 U.S. 355, 358 (1996) (consistent with principles of federalism, the Act is no bar to the United States suing to protect itself from unconstitutional state exactions). Indeed, this Court has understood Congress' policy directive to be so evident and clear that the Court would read the Act to encompass even actions for declaratory relief, *California v. Grace Brethren Church*, 457 U.S. 393 (1982); *cf.*, *Great Lakes Dredge & Dock Co.,* 319 U.S. 293 (principles underlying the Tax Injunction Act justify declining declaratory judgment jurisdiction), and to constitute an exception to the otherwise sweeping and intentionally intrusive federal remedy under 42 U.S.C. §1983. *McNary*, 454 U.S. 100; see also, *National Private Truck Council,* 515 U.S. 582 (§1983 provides no basis for courts to issue injunctive or declaratory relief in state tax cases when there is an adequate remedy at law).[3]

2. But, as is said, "the devil is in the details,"-and the Ninth Circuit posits that exceptions to the Act's proscriptions lurk in Congress' very choice to describe the whole of

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[3] In this regard, the Ninth Circuit mistakenly relied on *Mitchum v. Foster*, 407 U.S. 225, 242 (1972) to justify circumvention of the Tax Injunction Act. *Mitchum* involved reconciliation of the "Anti-Injunction Act," 28 U.S.C. §2283, and the responsibility of federal courts under 42 U.S.C. §1983. The Court there concluded that injunctions under section 1983 were within the exceptions contemplated by Congress in the language of the Anti-Injunction Act. However, as this Court noted in *Farm Credit Services*, the Tax Injunction Act "on its face, yields no exception to the jurisdictional bar save where the State remedy is wanting." *Farm Credit Services*, 520 U.S. at 823.

a State's taxation process comprehensively, by reference to its three major aspects. Thus, where Congress intended the term "assessment" to describe the whole process of calculating the tax liability, the Court of Appeals reasoned that an "assessment" is the end-product – conceptually independent of all that led up to it – and may be distinguished from a "tax credit." But that court's purported distinction for purposes of evading the proscriptions of the Act, is neither reasonable nor practical.

The term "assessment," as used in the Act, must be understood to relate to an entire process of calculating a tax liability, not merely to the end result. Indeed, this understanding is reflected in Congress' use of the term in the Internal Revenue Code, 26 U.S.C. §6201(a)(1) ("[T]he Secretary shall assess all taxes shown on tax returns") and §6203 ("[A]ssessment shall be made by recording the liability of the taxpayer"). Thus, a State's "assessment" of a taxpayer's tax liability necessarily entails calculation and consideration of tax credits. As the district court correctly noted below, in declining to exercise jurisdiction: "Congress indicated that the [Tax Injunction Act] is not limited to collection only but was intended to encompass the process that the state uses in its determination of tax liability. Therefore, when the state offers tax credits to reduce tax liability, the credits become an integral part of the State's assessment of each taxpayer's liability." Pet. App. 31.

The amount of tax liability "assessed" is, to be sure, the bottom-line amount owed by the taxpayer, but to determine that amount it is necessary to first determine whether a taxpayer would be eligible for relevant tax credits. A determination of whether a State's tax credits are properly available to a given taxpayer is part of an

"assessment," the "entire plan or scheme fixed upon for charging or taxing." Webster's Third New International Dictionary 131 (1981); see Black's Law Dictionary 116-17 (6th ed. 1990); *cf.*, *American Civil Liberties Union Foundation v. Bridges,* 334 F.3d 416, 421 (5th Cir. 2003) (concluding that a tax "exemption" is part of "the entire plan or scheme fixed upon for charging or taxing.").

Furthermore, not only is tax assessment a process; it is a *complex* process involving state-law distinctions and competing considerations of myriad state tax policies. See, e.g., *Nordlinger v. Hahn*, 505 U.S. 1, 11 (1992) (deference accorded state classifications in recognition of complexity of state taxation schemes); *Williams v. Vermont*, 472 U.S. 14, 29 (1985) (discussing the "complex and redundant" . . . "overlapping series of credits and exemptions" built into Vermont's vehicle tax system and the purpose thereof); *cf.*, *Flora v. United States,* 362 U.S. 145, 157 (1960) (noting that, in construing a statute to determine whether the United States has waived immunity to suit by a taxpayer, the Court is concerned with "a jurisdictional provision which is a keystone in a carefully articulated and quite complicated structure of tax laws.") Among the policies informing this Court's construction of the Act is a recognition that federal constitutional issues in tax-adjudication matters "are likely to turn on questions of state tax law, which, like issues of state regulatory law, are more properly heard in the state courts." *Grace Brethren*, 457 U.S. at 410, quoting *Perez v. Ledesma*, 401 U.S. 82, 128, n.17 (1971) (Brennan, J., concurring); see also, *McNary*, 454 U.S. at 108-109, n.6.

C. Selectively Exempting Sub-Processes Of The State Tax Administration Scheme From Coverage Under The Act Would Defeat The Very Purpose Of The Act.

Tax credits, as *Amici* noted in their statement of interest, are an integral part of a complex system of taxation that States rely on for generating revenue and for balancing budgets. Federal court interdiction of what the court perceives to be a tax credit could do substantial violence to the delicately balanced network of taxes, deductions, exemptions, and credits that go into state revenue predictability and stability. The Ninth Circuit's simplistic conclusion in this case that interdiction of a tax credit will necessarily result in a "substantial additional revenue for the state", Pet. App. 26, is an example of such a ham-handed approach to state taxation.

Moreover, federal judicial invalidation of tax credits on constitutional grounds exposes States to demands for recoupment of improperly credited tax monies, calling for recalculation of tax returns, in many cases over a period of several years. In the case presently before the Court, the plaintiff taxpayers demanded that the district court order readjustment of the State's general fund to reflect invalidation of the tax credits. Pet. App. 14.

Federal court interdiction of any part of a state statutory scheme, therefore, will necessarily bring with it disruption of state tax administration and state budgeting. In every case of federal court interference with state tax administration, "the very maintenance of the suit itself intrude[s] on the enforcement of the state scheme." *McNary,* 454 U.S. at 114. And this Court has repeatedly stressed that "[a]ny delay in the proceedings of the officers, upon whom the duty is devolved of collecting the

taxes, may derange the operations of government, and thereby cause serious detriment to the public." *Dows,* 78 U.S. at 110, quoted in *McNary,* 454 U.S. at 102, *Grace Brethren,* 457 U.S. at 410-411 n.23, and *National Private Truck Council,* 515 U.S. at 586. The concern of *Amici* States, therefore, goes beyond the particular question whether a tax "credit" should be considered part of "assessment" for purposes of the Act. *Amici* are equally concerned with the broader implication of the appellate court's reasoning that the words "levy" and "collection" may also be atomized into constituent processes, and that some of those processes may be distinguished from others for purposes of coverage under the Act.

The Act is rooted in "the *imperative* need of a State to administer its own fiscal operations." *Tully v. Griffin, Inc.* 429 U.S. 68, 73 (1976) (italics added). Parsing the state tax administration process into sub-activities that may be separately restrained by a district court threatens to eviscerate the comprehensive preclusive effect of the Act by incrementally exempting from its anti-injunction reach component parts of the States' tax administration. This would render the Act virtually useless. If federal courts may pick and choose which parts of a State's tax administration processes are not covered by this Court's "hands off approach," *National Private Truck Council,* 515 U.S. at 586, the States will not be able to effectively predict, assess, or efficiently collect the tax revenues.

CONCLUSION

For the reasons stated, the Court should reverse the judgment of the court of appeals.

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